

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate the Proposed Tariffs)
Filed by Kauai Island Utility)
Cooperative and Other Related)
Matters.)
_____)

DOCKET NO. 2006-0498

ORDER NO. 23422

Filed May 8, 2007
At 9 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Karen Higashi

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ORDER

By this Order, the commission grants the timely motions to intervene of: (1) Hawaii Renewable Energy Alliance ("HREA");¹ (2) the County of Kauai;² (3) Chapeau, Inc., dba BluePoint Energy, Starwood Hotels and Resorts Worldwide, Inc. ("Starwood Resorts"), and the Hawaii Health Systems Corporation ("HHSC") (collectively, the "BluePoint Energy Movants");³ and (4) Marriott Hotels Services, Inc., on behalf of Kauai Marriott Resort & Beach Club ("Kauai Marriott").⁴ The commission also defers issuing a ruling on the motion filed by KAUAI ISLAND UTILITY COOPERATIVE

¹Motion to Intervene of HREA; and Certificate of Service, filed on March 2, 2007 (collectively, "HREA's Motion").

²County of Kauai's Motion to Intervene; Verification of Christiane L. Nakea-Tresler; and Certificate of Service, filed on March 6, 2007 (collectively, "County of Kauai's Motion").

³BluePoint Energy, Starwood Resorts), and HHSC's Joint Motion to Intervene; and Certificate of Service, filed on March 8, 2007 (collectively, "BluePoint Energy Movants' Motion").

⁴Motion to Intervene of Kauai Marriott; and Certificate of Service, filed on March 9, 2007 (collectively, "Kauai Marriott's Motion").

("KIUC") to defer, suspend, or terminate the commission's investigation of KIUC's proposed standby service tariff.

The parties will be given an opportunity to meet and attempt to reach agreement on a proposed methodology for KIUC's standby service tariff and on the proposed interconnection tariff.

For the interconnection tariff: (1) KIUC, by June 1, 2007, shall submit a report detailing the progress of the parties' efforts in reaching a consensus on KIUC's proposed interconnection tariff; and (2) the parties, by June 8, 2007, shall submit a stipulated procedural schedule that identifies their agreed-upon issues, procedural steps, and schedule of proceedings for the interconnection portion of this proceeding.

For the standby service tariff: (1) KIUC, by July 6, 2007, shall submit a report detailing the progress of the parties' efforts in reaching a consensus on the proposed methodology for KIUC's proposed standby service tariff; and (2) the parties, by July 13, 2007, shall submit a stipulated procedural schedule that identifies their agreed-upon issues, procedural steps, and schedule of proceedings for the standby service portion of this proceeding.

I.

Background

Under its present standby service tariff, KIUC's standby charge is \$5.00 per month per kW of standby demand. KIUC's proposed new standby charges, per applicable rate schedule, are \$35.30/kW for Schedule J, \$31.25/kW for Schedule L,

and \$37.47/kW for Schedule P, per month of contracted standby demand. KIUC explains that its present standby charge took effect in 1984, has not increased or changed since then, and two customers are currently receiving standby service (a large power customer and a large residential estate, respectively).⁵

A.

Procedural Background

On December 28, 2006, the commission opened this investigative docket to review and address: (1) the proposed tariffs (standby service and interconnection) filed by KIUC; and (2) Sections 111(d)(15) and 112(b)(5) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as amended by the Energy Policy Act of 2005, governing interconnection standards.⁶ The commission named KIUC and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy

⁵See written testimony of KIUC's President and Chief Executive Officer, pages 1 - 2, presented at the public hearing held on February 27, 2007.

⁶Order No. 23172, filed on December 28, 2006. Docket No. 2006-0498 arises out of the commission's distributed generation investigative proceeding in In re Public Util. Comm'n, Docket No. 03-0371; specifically, the commission's directive that the electric utilities file proposed interconnection and standby service tariffs for the commission's review and approval.

KIUC's proposed interconnection tariff is based on the Federal Energy Regulatory Commission's Small Generator Interconnection Agreement for Generating Facilities No Larger Than 20 MW.

KIUC presently has a [Standby] Rider A. See Docket No. 03-0372, Decision and Order No. 22248, at 41 - 42 n.64. KIUC's proposed revisions to its standby service tariff are based on its cost of service study dated November 2006, completed using KIUC's financial results for the year ended December 31, 2003.

("Consumer Advocate"), as parties, and invited interested persons to timely move to intervene or participate in this proceeding.

By Order No. 23172, the commission also identified three preliminary issues,⁷ and required that any motion to intervene or participate specifically identify the issue or issues on which the person seeks intervenor or participant status. As part of its investigation, the commission also held a public hearing on February 27, 2007, in Lihue, Kauai.

Timely motions to intervene were filed by HREA (March 2, 2007); the County of Kauai (March 6, 2007); the BluePoint Energy Movants (March 8, 2007); and Kauai Marriott (March 9, 2007). On March 14, 2007, KIUC filed a Motion to Defer, Suspend and/or Terminate the Review and Investigation of

⁷Specifically:

1. Whether KIUC's proposed revisions to its standby service tariff are just and reasonable and consistent in principle with the guidelines and requirements set forth in Decision and Order No. 22248, filed in Docket No. 03-0371, as clarified by Order No. 22375, filed in the same docket.
2. Whether KIUC's proposed interconnection tariff is just and reasonable and consistent in principle with the guidelines and requirements set forth in Decision and Order No. 22248, filed in Docket No. 03-0371, as clarified by Order No. 22375, filed in the same docket.
3. Whether the commission should adopt, modify, or decline to adopt in whole or in part, the PURPA interconnection standards, including the extent to which KIUC has already met the PURPA interconnection standards.

Order No. 23172, at 8 - 9. "These are preliminary issues for consideration. During the development of the prehearing (or procedural) order for this proceeding, the parties (and intervenors and participants, if any) shall have the opportunity to restructure these preliminary issues, stipulate to eliminate them, or suggest other issues for resolution in this proceeding for the commission's review and consideration." Id. at 9.

KIUC's Standby Tariffs.⁸ Responses to KIUC's Motion were filed by Kauai Marriott (March 21, 2007)⁹ and the BluePoint Energy Movants (March 22, 2007).¹⁰ On April 16, 2007, KIUC filed its Reply to the Kauai Marriott and BluePoint Energy Movants' Responses.¹¹

B.

HREA's Motion

HREA is a Hawaii-based, private, non-profit corporation, exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986. It is

⁸KIUC's Motion to Defer, Suspend and/or Terminate the Review and Investigation of KIUC's Standby Tariffs; Memorandum in Support of Motion and in Response to Motions to Intervene ("Memorandum"); Declaration of Randall J. Hee, P.E.; and Certificate of Service, filed on March 14, 2007, as supplemented on March 16, 2007 (collectively, "KIUC's Motion").

⁹Response of Kauai Marriott in Opposition to the Motion of KIUC to Defer, Suspend and/or Terminate the Review and Investigation of Standby Tariffs, and Request for Clarification; Memorandum in Support of Response in Opposition and Request for Clarification of Kauai Marriott; and Certificate of Service, filed on March 21, 2007 ("Kauai Marriott's Response").

¹⁰BluePoint Energy Movants' Comments in Response to KIUC's Motion to Defer, Suspend and/or Terminate the Review and Investigation of KIUC's Standby Tariff; and Certificate of Service, filed on March 22, 2007 (collectively, "BluePoint Energy Movants' Response").

¹¹See KIUC's Response to (1) Kauai Marriott's Response; and (2) BluePoint Energy Movants' Response; and Certificate of Service, filed on April 16, 2007 ("KIUC's Reply"). By letter dated March 28, 2007, KIUC requested leave from the commission to file a reply to Kauai Marriott and the BluePoint Energy Movants' Responses, by April 16, 2007. By letter dated April 10, 2007, commission counsel informed KIUC to file its reply by April 16, 2007. By this Order, the commission formally grants KIUC's request for leave to file its reply.

composed of developers, manufacturers, distributors, scientists, engineers, and advocates of renewable energy.

HREA notes its status as past and present intervenors in an array of energy-related commission dockets, including Docket No. 03-0371. HREA asserts that it has a substantial and continuing interest in the subject of renewable energy in the electric utility sector, and with respect to this proceeding, its interests extend directly to the implementation of appropriate interconnection requirements and standby service tariffs for all forms of distributed generation, including renewable and combined heat and power systems.

C.

County of Kauai's Motion

The County of Kauai is a political subdivision of the State of Hawaii ("State"), and is the governing body for all residents of Kauai. The County of Kauai notes that it participated in Docket No. 03-0371, and as a large consumer of electricity and a member-owner of KIUC, it has a vested and direct interest in distributed energy resources and technology, and in the efficient use of energy resources. Moreover, the County of Kauai states that it has opportunities for joint ventures with power generators and has a strong interest in generating renewable and fossil-fueled power at its own facilities.¹² The County of Kauai also expresses its concerns

¹²With respect to renewable energy, the County of Kauai notes that, pursuant to Hawaii Revised Statutes ("HRS") § 46-19:

with the manner in which electric services may be planned, priced, and provided on Kauai, and its role in land use planning, permitting, and energy emergency preparedness for disaster and market disruptions.

The County of Kauai asserts that: (1) it has unique knowledge of its own renewable and demand-side management projects, which will be affected by KIUC's proposed standby rates; and (2) its knowledge, the expertise of its energy coordinator and its own expert witnesses, can assist in developing the record relating to issues on the island of Kauai. Lastly, the County of Kauai informs the commission as follows:

The County opposes the standby charges as proposed by KIUC. The County contends that the KIUC standby rates as presented will not support the Commission's policy of promoting the development of a market structure that assures: (a) distributed generation is available at the lowest feasible cost; and (b) distributed generation that is economical and reliable has an opportunity to come to fruition. In effect, the

Development of alternative energy resources. Each of the counties may participate in the development of alternative energy resources defined as geothermal, solar, wind, ocean power, biomass and solid wastes in joint venture with an end user or public utility pursuant to a plan for the direct utilization of the energy sources by an end user or public utility; provided that should a joint-venture partner not be available the counties may proceed with the development of alternate energy resources for their own consumption or for the furtherance of a plan for direct utilization by an end user or public utility.

HRS § 46-19. The County of Kauai also states that it has initiated several potential renewable energy distributed generation projects that may be impacted by KIUC's proposed standby tariff, including "a 72 kW AC photovoltaic power system for the Lihue Civic Center for which a contract is being drafted; a photovoltaic power system for the police/civil defense facility which is under consideration; and a methane-fueled power system located on or near the County's Kekaha Landfill for which a feasibility study was completed in February 2007." County of Kauai's Motion, at 4.

very high standby rates proposed by KIUC (e.g. a 749% increase for Schedule P), serves to make many distributed generation projects impractical. The County questions some of the assumptions made by KIUC to arrive at a high, across-the-board rate applicable to all DG systems without consideration of hours of operation, system reliability and efficiency, system impacts, etc.

County of Kauai's Motion, at 6 - 7.

D.

BluePoint Energy Movants' Motion

BluePoint Energy, Starwood Resorts, and HHSC seek to intervene as a unified team, with the common purpose of ensuring that any rates proposed by KIUC for standby service and interconnection fees are fair, reasonable, and cost-based.

BluePoint Energy, a Utah corporation, is a vendor of combined cooling, heating and power ("CCHP") systems. In particular, BluePoint Energy designs, manufactures, markets, and maintains a series of CCHP products and services for industrial and other large users of electrical energy, enabling such users to generate a large portion of their electrical power needs on-premises. BluePoint Energy notes that it has installed CCHP equipment in the State, and is in the course of negotiating or contracting with other customers who intend to install BluePoint Energy's CCHP equipment in facilities in the State, including the island of Kauai.

Starwood Resorts, a Maryland corporation, is a major operator of visitor and vacation ownership facilities located worldwide, including facilities located in the State. Specifically, Starwood Resorts owns, maintains, operates, or

manages eleven hotels and resort properties on four of the Hawaiian islands, and is building additional properties in Hawaii.

Starwood Resorts has installed, and intends to install, CCHP systems in a number of its hotels and resorts worldwide, including Hawaii. Starwood Resorts and BluePoint Energy are presently under contract for four properties in Hawaii, and are in negotiations to install CCHP equipment in several additional properties in Hawaii. Starwood Resorts notes that: (1) as a consumer of KIUC's electric utility service, it will be severely and adversely impacted if KIUC's standby rates were to take effect, as proposed; and (2) KIUC's proposed standby rates deter Starwood Resorts from going forward with its plans to install additional CCHP equipment.

HHSC owns, operates, and manages twelve community hospitals on five of the Hawaiian islands, including two hospitals on the island of Kauai. HHSC states that it is the fifth largest employer in the State, the fourth largest community healthcare system in the United States, and is a large consumer of electric power throughout the State.

HHSC explains that: (1) it has CCHP facilities in place in three of its twelve Hawaii facilities, including a combined heat and power ("CHP") facility at the West Kauai Medical Center; and (2) it plans to add CCHP equipment in some of its other hospitals, if feasible, including the Samuel Mahelona Memorial Hospital on Kauai. HHSC notes that: (1) as a consumer of KIUC's electric utility service, it will be severely and adversely impacted if KIUC's standby rates were to take effect, as

proposed; and (2) KIUC's proposed standby rates will frustrate HHSC's plans to install additional CHP equipment.

The BluePoint Energy Movants assert that while KIUC indicated at the public hearing that it no longer believes that the utility's proposed standby service rate increase should occur at this time, "the very pendency of this proceeding has effectively stopped all consideration of installing additional CCHP systems until the consuming public - including Starwood [Resorts] and [HHSC] - know with certainty that any proposed rate and rule governing CCHP and other DG applications are, indeed, fair and reasonable, which these are certainly not."¹³ The BluePoint Energy Movants further assert that until fair and reasonable standby service rates are established, distributed generation will continue to suffer, leaving large electric consumers on Kauai with no alternative energy choices.

The BluePoint Energy Movants explain that BluePoint Energy took the initiative of joining with two large electric consumers with CCHP experience (Starwood Resorts and HHSC), and has formed a coalition of three entities to act as a single voice for the commission's benefit. Moreover, the BluePoint Energy Movants state their commitment to: (1) working with any other designated intervenors to identify common positions that can be presented to the commission more clearly and concisely; and (2) providing the necessary resources to develop a sound record, including technical expertise and testimony. The BluePoint Energy Movants also indicate that: (1) the preliminary issues

¹³BluePoint Energy Movants' Motion, at 6.

identified by the commission are adequate, and they have no interest in broadening the issues; and (2) they will continue to seek methods of presenting the best evidence in an economical and efficient manner, including the possibility of using the mediation process pursuant to HRS § 91-8.5, provided that it does not delay a final and fair resolution of the issues. Lastly, the BluePoint Movants state their opposition to KIUC's proposed tariffs, contending that: (1) the proposed rates contradict the State's energy policies and are in excess of standby and interconnection charges of comparable mainland utilities; and (2) the apparent deficiencies in KIUC's filing include erroneous assumptions, irrelevant costs, and the failure to quantify the benefits of CCHP to KIUC's system.

E.

Kauai Marriott's Motion

Marriott Hotel Services, Inc., is the management company for Kauai Marriott, and as such, it is responsible for the operation and maintenance requirements of Kauai Marriott's facilities. Kauai Marriott explains that it is one of the major resorts on Kauai, and currently takes all of its electrical service from KIUC.

Kauai Marriott is currently installing a CHP system, based on the substantial cost savings projected. Specifically, Kauai Marriott will be installing a CHP system that will operate twenty-four hours a day, seven days a week, "to provide a portion of the Kauai Marriott's electricity, to heat domestic hot water,

and to heat the swimming pool, which is currently not heated. The system is designed such that, if the grid were to go offline for any reason, the CHP plant would also go offline. If this were to occur, the Kauai Marriott would use its emergency generators to provide power."¹⁴ Kauai Marriott notes that its CHP project is part of the 2005 National Accounts Energy Alliance program sponsored by the Department of Energy's Efficiency and Renewable programs. The estimated on-line date for Kauai Marriott's CHP system is November 2007.

Kauai Marriott asserts that: (1) KIUC's proposed standby service tariff, if allowed to take effect, will have a serious and detrimental impact on its projected cost savings, and dramatically affect the economics of the CHP project; and (2) KIUC's proposed interconnection tariff "could have a major impact on the Kauai Marriott by increasing the costs of connecting its CHP project to the grid, and by imposing standards that are unnecessary on that interconnection."¹⁵

Based on these reasons, Kauai Marriott contends that it has a direct and substantial interest in this proceeding that justifies its intervention herein,¹⁶ and that its participation

¹⁴Kauai Marriott's Motion, at 2.

¹⁵Kauai Marriott's Motion, at 4.

¹⁶Concomitantly:

The Kauai Marriott is aware that, at the February 27, 2007 public hearing, KIUC stated that it was not proposing to implement these proposals at this time, but thought that the better course of action might be to wait until a full base rate case to address them. However, at this point, the Kauai Marriott does not know whether KIUC plans to modify its filing or to take other action consistent with that statement. Accordingly, the Kauai Marriott must address all

will assist in developing a sound record and will neither broaden the issues nor delay the proceeding.¹⁷ Kauai Marriott states that it opposes KIUC's proposed standby and interconnection tariffs, and expresses its willingness to participate in discussions to determine whether any negotiated outcome is possible.

F.

KIUC's Motion

In its Motion, KIUC explains that it filed its proposed unbundled standby rates in compliance with the commission's directive in Docket No. 03-0371. However, at the time it filed its proposed unbundled standby rates on November 27, 2006 in Docket No. 03-0371, "KIUC had not yet reached a firm position as to the timing of when it would want these rates to actually be implemented. KIUC reached its position on this matter shortly prior to the February 27, 2007 public hearing, at which time KIUC stated its position that it did not believe that its [proposed] standby rates should be implemented at this time, but rather

issues raised by the filing here and now, pending further filings by KIUC or further action by the Commission.

Kauai Marriott's Motion, at 6 n.2.

¹⁷In addition to the preliminary issues previously identified by the commission, Kauai Marriott identifies twelve potential sub-issues they assert are directly related to the preliminary issues. See Kauai Marriott's Motion to Intervene, at 10 - 12 (twelve sub-issues identified).

should be reviewed in connection with KIUC's first rate case as an electric cooperative."¹⁸

Accordingly, KIUC requests that the commission: (1) defer, suspend, or terminate its review and investigation of KIUC's proposed standby service tariff; and (2) proceed with its review and investigation of KIUC's proposed interconnection tariff and on the PURPA interconnection standards issue.

In support of its underlying position, KIUC contends:

1. Any prospective change to its current standby service rate should only be made in the context of a general rate case proceeding, and to do otherwise will constitute impermissible single-line item ratemaking.¹⁹

2. The implementation of cost-based rates at this time is inconsistent with the best interests of the public and KIUC's members, as it could lead to many unintended consequences, including: (A) discouraging the deployment of distributed generation and renewable projects; and (B) providing an incentive to standby customers to remove themselves from KIUC's electric system, which will detrimentally impact KIUC's remaining customers.²⁰

3. Instead, KIUC seeks additional time to review its methodology in determining its standby rates, and states that such a review within the context of a general rate proceeding will ensure that a proper balance is achieved between the

¹⁸KIUC's Memorandum, at 2 - 3.

¹⁹See KIUC's Memorandum, Section II.A, at 4 - 5.

²⁰See KIUC's Memorandum, Section II.B, at 5 - 7.

allocation of standby costs and the various other costs to be considered in determining fair and reasonable rates for all customer classes.

In addition:

. . . KIUC's customers will not be harmed, and in fact will benefit from the deferral, suspension and/or termination of this standby rate investigation. For KIUC's customers currently paying or that may be soon paying at KIUC's existing standby rates, they will be able to continue to pay at KIUC's low \$5 per kilowatt (kw) rate until such time as KIUC's first rate case proceeding will occur. Given that the earliest KIUC anticipates filing for a rate case is the first quarter of 2008, the soonest these new rates could come into effect is at the end of 2008 or beginning of 2009. Essentially, these customers can be assured of at least approximately 21 months without an increase in standby rates. In addition, all interested entities, including those who are seeking intervention in this proceeding, will still have an opportunity to provide their comments and any concerns with KIUC's standby rates at the time of that rate case proceeding. .

KIUC's Memorandum, at 5 - 6.

4. While KIUC acknowledges that some of the entities that testified at the public hearing, including those entities that seek to intervene in this proceeding, "have stated that even if KIUC no longer sought to implement a new standby rate at this time, they still wanted the Commission to review KIUC's proposed standby rate tariff so that they could know what rate would apply in the future for planning purposes. KIUC does not believe this is a feasible contention. As stated above, because KIUC is not seeking to implement this rate, it does not see any reason to investigate the proposed tariff when the standby rate that would be imposed during KIUC's first rate case proceeding will be based on an entirely different time period and may have an entirely

different methodology[.] As a result, a review of the proposed standby rate at this time would not give any certainty as to the rates that would apply in the future."²¹

5. A review of KIUC's standby rates at this time, when KIUC is no longer seeking such implementation, will not serve any useful purpose.²² Instead, KIUC, in its forthcoming general rate proceeding will utilize forward-looking test year cost data instead of the 2003 cost study that constitutes the basis of its currently proposed unbundled standby rates. Following its review of its standby rate methodology within the context of its general rate proceeding, KIUC may propose an entirely different standby rate structure, one that perhaps may propose something less than fully cost-based rates to recognize both the interests in promoting or at least not discouraging distributed generation and renewables, and the risks of KIUC's standby customers deciding to remove themselves from KIUC's electric grid.

KIUC concludes by stating that it does not object to the motions to intervene, subject to the conditions that: (1) the movants' intervention herein are limited to the remaining docketed issues, i.e., KIUC's proposed interconnection tariff and the PURPA interconnection standards issue;²³ and (2) the

²¹KIUC's Memorandum, at 7.

²²See KIUC's Memorandum, Section II.C, at 7 - 8.

²³KIUC reasons that if the commission grants KIUC's Motion and terminates its investigation of KIUC's proposed standby tariff in this proceeding without a decision on the merits, the movants' request to intervene on the standby tariff issue will be moot. See KIUC's Memorandum, at 8 n.7.

commission precludes the movants from unreasonably broadening the issues already established and from unduly delaying the proceeding.

G.

Responses to KIUC's Motion

The BluePoint Energy Movants contend that: (1) KIUC's 2003 cost study provides the commission and intervenors with much of what is needed to properly identify, quantify, and allocate KIUC's costs with respect to standby service; and (2) any delay in implementing cost-based standby service charges constitutes a denial of distributed generation on the island of Kauai. Moreover, in response to KIUC's arguments, the BluePoint Energy Movants contend that: (1) single-item rate changes are not legally impermissible under Hawaii law;²⁴ (2) cost-based standby service rates, while possibly inconsistent with KIUC's near-term interests, are in the long-term best interests of KIUC and the public; and (3) KIUC recognizes the advantages of distributed generation.

The BluePoint Energy Movants oppose KIUC's request and urge the commission to defer action on KIUC's Motion until the commission-designated parties to the proceeding have the opportunity to explore various options, including: (1) jointly discussing KIUC's Motion and the effect the granting of such a

²⁴The BluePoint Energy Movants specifically cite to the following language in HRS § 269-16(b): "The commission, in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in [HRS] section 269-12(b)."

motion will have on the parties; and (2) "the possible KIUC commitment to promote distributed generation by eliminating stand-by charges, at least for the near-term[.]"²⁵ This deferral approach, the BluePoint Energy Movants suggest, "might give the [designated] parties the opportunity to discuss a mutually satisfactory settlement of the issue."²⁶

In the alternative, the BluePoint Energy Movants recommend the denial of KIUC's Motion, without prejudice, to allow KIUC to possibly renew its request until a later stage of the proceeding.

Kauai Marriott opposes KIUC's Motion at this juncture, given the asserted lack of clarity concerning the relief requested by KIUC in its Motion, and the uncertainty concerning a number of other issues. Instead, Kauai Marriott seeks clarification with respect to certain matters. If the requested clarifications are made, Kauai Marriott will be willing to reconsider its position on what it perceives to be KIUC's basic request to address the standby rate and tariff issues in a future general rate proceeding. "Assuming that the requested clarifications are made, and if the Commission so orders, KIUC and the parties could be directed to convene and discuss the issues raised by the KIUC Motion and the various responses thereto to attempt to craft a unified position to present to the Commission concerning those issues."²⁷

²⁵BluePoint Energy Movants' Response, at 5.

²⁶BluePoint Energy Movants' Response, at 1 n.1.

²⁷Kauai Marriott's Motion, at 2.

Kauai Marriott specifically seeks clarification of the following matters:²⁸

1. The specific relief requested by KIUC through its motion, noting that a significant difference exists between the utility's request to suspend and defer the proposed standby rates, versus the utility's request to terminate this proceeding. Kauai Marriott reasons that KIUC's request to terminate this proceeding is more consistent with KIUC's arguments, since termination implies that the proposed standby rates will be withdrawn, and KIUC will be able to file a new proposal in its future general rate proceeding. "If this is KIUC's intention, KIUC should clearly so state and should further move to simply withdraw the current tariff filing."²⁹

2. In the absence of any assurances from the commission and KIUC that the outcome of the proceedings in Docket No. 2006-0497 will not be used as precedent and will in no way be dispositive of the issues raised in this proceeding or in a future KIUC general rate proceeding, Kauai Marriott has no choice but to oppose KIUC's Motion. That said, if those assurances are provided, Kauai Marriott is willing to reconsider its position, noting that some merit exists to KIUC's proposal to terminate this proceeding, and instead, address the standby rate and tariff issues in KIUC's future general rate proceeding.

Kauai Marriott concludes by stating that once the commission has determined the parties to this proceeding and the

²⁸See Kauai Marriott's Memorandum, Section II.C, at 6 - 9.

²⁹Kauai Marriott's Memorandum, at 7.

requested clarifications are made by KIUC, the commission could direct the parties to convene and discuss the issues raised by KIUC's Motion and the various responses thereto in order to attempt to craft a unified position to present to the commission concerning those issues.

H.

KIUC's Reply

In its Reply filed on April 16, 2007:

1. KIUC clarifies that it objects to the motions to intervene with respect to the standby rates and tariff issue, "for the same reasons KIUC is seeking its Motion to defer, suspend and/or terminate the standby rate/tariff investigation in the first place. In particular, there is no reason to allow Marriott, Bluepoint Energy or the other movants to participate in this proceeding and raise issues in connection with the cost-based standby rates and tariffs submitted on November 27, 2006 if KIUC's position itself is to not seek to implement these rates at this time."³⁰

2. KIUC reiterates that it filed its proposed unbundled, cost-based standby rates in compliance with the commission's directive in Docket No. 03-0371. Thus, KIUC believes that it is inappropriate to seek to withdraw its compliance filing, but instead, it is more appropriate "to not

³⁰KIUC's Reply, at 2 - 3. As additional support, KIUC reiterates the arguments made in its Motion. See KIUC's Reply, Section I.A, at 2 - 4; and Sections I.E. and I.F, at 10 - 11.

have its standby rates investigated in any manner until the time of KIUC's first rate case proceeding."³¹

3. KIUC's preference is for the commission to terminate its review and investigation of KIUC's standby rates and tariffs, "as that is the most consistent with the assertions made by KIUC in support of its Motion. However, because this is an investigatory proceeding rather than a proceeding initiated by KIUC, KIUC will defer to the Commission's discretion as to how best to grant KIUC relief in the event it grants KIUC's Motion."³²

4. Contrary to Kauai Marriott's assertions, KIUC contends that the commission's rulings in In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 2006-0497, will not have any precedential value to Docket No. 2006-0498 or KIUC's forthcoming rate case proceeding.³³ Specifically, Dockets No. 2006-0497 and No. 2006-0498 will be determined on their own respective facts and circumstances (as well as KIUC's cooperative ownership structure), and the results in Docket No. 2006-0497 cannot be used as precedent for or against KIUC, and vice versa.

5. Contrary to the BluePoint Energy Movants' assertion, KIUC is not attempting to delay the subject

³¹KIUC's Reply, at 5.

³²KIUC's Reply, at 5; see also KIUC's Reply, Section I.B, at 4 - 5.

³³Citing to case law, KIUC asserts that: (1) the doctrine of stare decisis does not apply to administrative agencies; and (2) administrative agencies may depart from their own precedents if a reasonable explanation is provided. See KIUC's Reply, Section I.C, at 6 - 8.

proceeding. Instead, by its Motion, KIUC is attempting to simplify rather than protract the relevant issues.³⁴

6. KIUC concludes by "request[ing] that the Commission grant its Motion and deny the Movants' Motions to Intervene to the extent they pertain to KIUC's standby rates and tariffs."³⁵

II.

Discussion

Based on the reasons set forth in Sections II.B and II.C, below, the commission will: (1) grant the motions to intervene; and (2) defer action on KIUC's Motion.

A.

KIUC's Motion

By its Motion and Reply, KIUC essentially contends that it makes no sense for the commission to establish, over KIUC's objection, a new standby rate in this proceeding, when a newer, different rate will be willingly proposed by KIUC in its forthcoming application for a general rate case, utilizing the updated cost data that corresponds to KIUC's test year. Thus, with respect to its standby service tariff, KIUC seeks to maintain the status quo by terminating the commission's investigation of this issue, including the charge presently assessed by KIUC for standby service. KIUC makes it clear that

³⁴See KIUC's Reply, Section I.D, at 8 - 10.

³⁵KIUC's Reply, at 11.

its proposed new standby charges were filed in compliance with the commission's directive in Docket No. 03-0371.

B.

Intervention

HAR § 6-61-55, which governs intervention in a commission proceeding, states:

§6-61-55 Intervention. (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.

- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
 - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and

(9) Whether the applicant's position is in support of or in opposition to the relief sought.

(c) The motion shall be filed and served by the applicant in accordance with sections 6-61-21 and 6-61-57.

(d) Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.

HAR § 6-61-55. Moreover, intervention "is not a matter of right but a matter resting within the sound discretion of the commission." In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

KIUC affirmatively objects to the movants' intervention in the standby service tariff issue, stating that there is no reason to allow the movants to intervene in this issue if KIUC opposes the implementation of new standby rates in this proceeding. KIUC also reasons that the granting of its Motion will render this issue moot. Conversely, KIUC does not object to the movants' intervention in the interconnection issues (interconnection tariff and PURPA interconnection standards), subject to certain conditions. The other current party to this proceeding, the Consumer Advocate, does not affirmatively object to the movants' participation as intervenors.

The commission finds that the movants' participation in this proceeding can assist the commission in developing a sound record, and that the allegations raised by the movants in their respective motions appear reasonably pertinent to the preliminary issues identified by the commission, and will not unduly broaden the issues already presented. The commission, thus, grants

intervention to HREA, the County of Kauai, BluePoint Energy, Starwood Resorts, HHSC, and Kauai Marriott.

In support of its decision to grant intervention to the movants, the commission notes:

1. To-date, HREA and the County of Kauai have actively participated as an intervenor and participant, respectively, in Docket No. 03-0371,³⁶ and seek to continue their participation in the commission's distributed generation investigation by way of this proceeding.

2. BluePoint Energy is a vendor of CCHP systems, while Starwood Resorts and HHSC have installed or intend to install CCHP systems on the island of Kauai. BluePoint Energy, Starwood Resorts, and HHSC, each raise allegations that are reasonably pertinent to the preliminary issues identified by the commission, and they each represent that they have no interest in broadening said issues. Thus, each of these entities individually and independently meet the requirements for intervention under HAR § 6-61-55(d). Nonetheless, for efficiency purposes, the BluePoint Energy Movants, who are represented by the same counsel, seek to present a unified position in developing a sound record, while working with the other parties in identifying commission positions and utilizing alternative processes such as mediation in reaching an amicable resolution.

3. Kauai Marriott asserts a direct and substantial interest in this proceeding, and represent that its participation

³⁶In Docket No. 03-0371: (1) HREA filed comments on KIUC's proposed interconnection tariff on September 8, 2006; and (2) the County of Kauai filed comments on KIUC's proposed standby service tariff on December 8, 2006.

will assist in developing a sound record and will neither broaden the issues nor delay the proceeding. In addition, Kauai Marriott expresses its willingness to participate in discussions to determine whether any negotiated outcome is possible.

The commission expressly cautions the newly named parties that their participation as intervenors in this docket will be limited to the issues raised in this proceeding. The commission will preclude any effort by the intervenors to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider their participation in this docket if, at any time during the course of this proceeding, the commission determines that any of the intervenors are unreasonably broadening the pertinent issues raised or unduly delaying the proceeding.³⁷ In addition, the BluePoint Energy Movants, in accordance with their decision to present a unified position, shall: (1) jointly file their pleadings (and shall not file any separate pleadings from the entities); and (2) designate a single representative or counsel that is authorized to bind and act on behalf of all three entities.

³⁷The commission, as a courtesy, served copies of Order No. 23172 and the Notice of Public Hearing to the parties and participant in Docket No. 03-0371, and to the interested persons that submitted written comments on the electric utilities' proposed tariffs filed in Docket No. 03-0371. Beginning with this Order, however, the commission's service list for this proceeding will only list the parties named to Docket No. 2006-0498.

C.

Procedures

The commission concurs with the BluePoint Energy Movants' recommendation to defer action on KIUC's Motion until the named parties have an opportunity to discuss a mutually satisfactory settlement. Kauai Marriott, likewise, suggests that the commission instruct the named parties to meet and discuss the issues raised by KIUC's Motion in order to reach a unified position to present to the commission.

Thus, the commission will give the parties an opportunity to meet and attempt to reach a mutually agreeable settlement and consensus on a proposed methodology for KIUC's standby service tariff and on KIUC's proposed interconnection tariff.³⁸ The commission envisions that any such settlement will

³⁸In Docket No. 03-0371, Decision and Order No. 22248, filed on January 27, 2006, the commission stated:

. . . the commission finds that standby fees must be set at a level allowing the utility to recover the costs incurred by the electric utility that are reasonably apportioned to the customer-generator. A carefully constructed standby charge will prevent uneconomic bypass, because an economically rational customer will not make the investment unless the sum of that investment, the operating costs, and the standby charge are exceeded by the savings on the customer's bill resulting from the investment (plus any revenues the customer might earn from permissible sales back to the grid).

As part of the review and approval of the standby rates discussed above, the commission will also consider whether there is a benefit to deferring the assignment of any unrecovered costs until a certain percentage of load has been lost to distributed generation applications. In doing so, the commission will encourage deployment of beneficial and economic distributed generation while providing protection to the utility. Once the percentage is reached, the commission can appropriately allocate the charges for unrecovered costs to those whose new generation rendered these costs unrecoverable.

provide the parties with a level of certainty regarding any standby service charges that may be imposed by KIUC. Moreover, an agreed-upon methodology can serve as a basis for calculating the standby service charge KIUC intends to file in its

Docket No. 03-0371, Decision and Order No. 22248, at 43 - 44.

In Docket No. 03-371, Order No. 22375, filed on April 6, 2006, the commission further stated:

The HECO Utilities, in establishing new standby rates required by Decision and Order No. 22248, intend to develop special standby rate provisions for renewable forms of distributed generation in order to balance the objectives of encouraging the development of renewable energy systems consistent with the [Renewable Portfolio Standards] mandate, while protecting ratepayers against the loss of fixed costs recovery due to non-utility owned distributed generation systems. "Options that will be considered include providing standby rate exemptions to renewable systems below a certain size or systems that provide less than a certain amount of a customer's total energy."

The HECO Utilities seek the commission's confirmation that their approach of developing special standby rate provisions for renewable forms of distributed generation is acceptable in concept. They reason that such an approach appears consistent with the commission's stated intent to "consider whether there is a benefit to deferring the assignment of any unrecovered costs until a certain percentage of load has been lost to distributed generation applications."

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The commission appreciates the HECO Utilities' efforts to give renewable energy powered distributed generation projects favorable consideration. The commission, however, agrees with the Consumer Advocate that any determination as to what should or should not be subject to the standby tariffs should only be made after the tariffs are filed and the parties are able to review the specifics of such tariffs.

Docket No. 03-0371, Order No. 22375, at 27 - 29 (footnotes, text, and citations therein omitted); see also letter from the Governor, dated March 13, 2007, to the commission (supporting policies that encourage the development of distributed generation facilities, including both customer-sited renewable energy generation and more efficient combined heat and power generation units).

forthcoming application for a general rate case. KIUC shall lead the parties' efforts in this collaborative.

For the interconnection tariff: (1) KIUC, by June 1, 2007, shall submit a report detailing the progress of the parties' efforts in reaching a consensus on KIUC's proposed interconnection tariff;³⁹ and (2) the parties, by June 8, 2007, shall submit a stipulated procedural schedule that identifies their agreed-upon issues, procedural steps, and schedule of proceedings for the interconnection portion of this proceeding.⁴⁰

³⁹On March 1, 2007, KIUC filed the latest version of its proposed interconnection tariff with the commission, and served copies on: (1) the Consumer Advocate (i.e., the only other designated party at the time); and (2) the parties in Docket No. 03-371. See KIUC's Transmittal Letter, dated March 1, 2007, with attachments.

⁴⁰Specifically, whether the commission should adopt, modify, or decline to adopt in whole or in part, the Institute of Electrical and Electronic Engineers' Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, including the extent to which the electric utilities have already met these standards. See 16 U.S.C. §§ 2621(d)(15) and 2622(b)(5).

Section 102(a) of PURPA states:

This chapter applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

16 U.S.C. § 2612(a). KIUC confirms that its total sales of electrical energy, at this juncture, do not exceed 500 million kilowatt-hours. Docket No. 03-0371, KIUC's Comments, dated September 8, 2006, Attachment 1, at 1 n.1. Nonetheless, KIUC, pursuant to the commission's request, stated "its position on this matter as to whether KIUC should be required to adopt the IEEE Standard 1547." Docket No. 03-0371, KIUC's Comments, dated September 8, 2006, Attachment 1, at 1 n.1. The Consumer Advocate, likewise, submitted its comments on the PURPA interconnection standards issue on September 8, 2006. Docket 2006-0498

For the standby service tariff: (1) KIUC, by July 6, 2007, shall submit a report detailing the progress of the parties' efforts in reaching a consensus on the proposed methodology for KIUC's proposed standby service tariff; and (2) the parties, by July 13, 2007, shall submit a stipulated procedural schedule that identifies their agreed-upon issues, procedural steps, and schedule of proceedings for the standby service portion of this proceeding.

III.

Orders

THE COMMISSION ORDERS:

1. KIUC's request for leave, dated March 28, 2007, to file a reply by April 16, 2007, is granted.

2. The ruling on KIUC's Motion to Defer, Suspend or Terminate the Review and Investigation of KIUC's Standby Service Tariffs, filed on March 14, 2007, is deferred, consistent with the terms of this Order.

3. The motions to intervene of HREA, the County of Kauai, BluePoint Energy, Starwood Resorts, HHSC, and Kauai Marriott are granted, provided that their intervention shall not unreasonably broaden the issues, or unduly delay the proceeding, and they follow all applicable rules, orders, and other requirements imposed by the commission. In addition, the

No. 03-0371, Consumer Advocate's Comments, dated September 8, 2006.

In proposing a procedural schedule, the parties should remain cognizant that the deadline for commission action on the PURPA interconnection standards issue is on or about August 7, 2007.

BluePoint Energy Movants, in accordance with their decision to present a unified position, shall: (A) jointly file their pleadings (and shall not file any separate pleadings from the entities); and (B) designate a single representative or counsel that is authorized to bind and act on behalf of all three entities.

4. The parties will be given an opportunity to meet and attempt to reach agreement on a proposed methodology for KIUC's standby service tariff and on KIUC's proposed interconnection tariff. KIUC shall lead the parties' efforts in this collaborative.

5. For the interconnection tariff: (A) KIUC, by June 1, 2007, shall submit a report detailing the progress of the parties' efforts in reaching a consensus on KIUC's proposed interconnection tariff; and (B) the parties, by June 8, 2007, shall submit a stipulated procedural schedule identifying the agreed-upon issues, procedural steps, and schedule for this proceeding, for the interconnection portion of this proceeding.

If the parties are unable to agree on a stipulated procedural schedule, each party shall submit its own proposed procedural schedule that identifies the issues, procedural steps, and schedule for the interconnection portion of this proceeding, by June 8, 2007.

6. For the standby service tariff: (A) KIUC, by July 6, 2007, shall submit a report detailing the progress of the parties' efforts in reaching a consensus on the proposed methodology for KIUC's proposed standby service tariff; and (B) the parties, by July 13, 2007, shall submit a stipulated

procedural schedule that identifies their agreed-upon issues, procedural steps, and schedule of proceedings for the standby service portion of this proceeding.

If the parties are unable to agree on a stipulated procedural schedule, each party shall submit its own proposed procedural schedule that identifies the issues, procedural steps, and schedule for the standby service portion of this proceeding, by July 13, 2007.

7. The commission will accept written comments submitted from the general public in this proceeding until May 14, 2007.

DONE at Honolulu, Hawaii MAY - 8 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

2006-0498.dh1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23422 upon the following persons, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such person.

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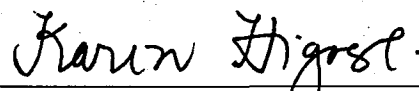
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DATED: MAY - 8 2007